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**SURFACE TRANSPORTATION BOARD**  
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

April 4, 2005

Mr. Doug Jones  
State Historical Society of Iowa  
Iowa Historical Building  
600 East Locust  
Des Moines, Iowa 50319-0290

Re: STB Docket No. AB 6 (Sub-No. 401X), The Burlington Northern and Santa Fe Railway Company – Abandonment Exemption – Polk County, Iowa  
Iowa SHPO R&C#: 010577126

Dear Mr. Jones:

The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) is writing you regarding our No Historic Properties Adversely Affected determination for the proceeding in STB Docket No. AB 6 (Sub-No. 401X), The Burlington Northern and Santa Fe Railway Company - Abandonment Exemption - in Polk County, Iowa.

Based on the information available, SEA has determined that the proposed rail abandonment would not adversely affect historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) located within the area of potential effect (APE)<sup>1</sup> for this undertaking. Therefore, the Board finds that there are **No Historic Properties Adversely Affected** for this undertaking in accordance with 36 CFR 800.5(b). Please inform SEA within the 30 day specified time frame if you object to this finding.

**Background**

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption with the Board seeking its approval for authority to abandon 1.88 miles of rail line in Polk County, Iowa. The Board's approval of the abandonment is considered an undertaking under Section 106 of the National Historic Preservation Act (NHPA)(16 U.S.C. 470f) and is thus covered under its provisions.

SEA issued an Environmental Assessment (EA) analyzing the potential environmental effects of the proposed rail line abandonment which recommended a condition requiring BNSF

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<sup>1</sup> The APE consists of the rail line right-of-way.

to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process. SEA issued the EA for public review and comment on July 23, 2004. No comments were received. The Board imposed the condition recommended by SEA in its decision served August 16, 2004, granting abandonment authority.

In order to satisfy the condition imposed by the Board and complete the Section 106 process, BNSF retained the services of the University of Iowa Office of the State Archaeologist (UI-OSA) to conduct a Phase IA reconnaissance at the location of the proposed BNSF railway abandonment. The purpose of the survey was to assess the potential of the corridor through the examination of pertinent archaeological site records, previous archaeological reports, available maps, and a field visit. The potential of the project corridor was then evaluated according to the project horizontal and vertical impacts. On September 10, 2004, you accompanied Cynthia L. Peterson, Project Archaeologist for UI-OSA on her Phase IA field visit. On October 8, 2004, BNSF sent a copy of the Phase IA Reconnaissance of a Proposed Burlington Northern and Santa Fe Railway Company 1.88 Mile Abandonment, City of Des Moines, Polk County, Iowa [a.k.a., STB Docket AB-6 (Sub-No. 401X (Peterson 2004 – copy attached) to your office for your review.

In early September, 2004 (prior to the aforementioned field visit), you contacted Ken Blodgett of my staff raising concerns that ownership of portions of the rail line at issue in this docket had been transferred prior to the time that BNSF received abandonment authority from the Board. In a subsequent call on October 11, 2004, you indicated that you would be seeking advice from the Advisory Council on Historic Preservation (ACHP) regarding a possible foreclosure of opportunity to comment on the undertaking pursuant to 36 CFR 800.9(b).

On December 2, 2004, SEA staff was contacted by Karen Theimer-Brown of ACHP to discuss BNSF's abandonment. Following discussions with ACHP, SEA requested detailed information in writing from BNSF describing what had occurred regarding ownership of the rail line with a detailed chronology of what ownership transactions had taken place, the parties involved in the transactions, the date of those transactions, and the mileposts involved. In addition, SEA requested information on the steps taken by BNSF in this proceeding to comply with the section 106 process condition that the Board imposed, specifically information explaining how adverse effects to historic resources have been mitigated in order to justify the Board's finding of no adverse effect in this proceeding.

On January 24, 2005, BNSF responded in writing (BNSF's response - copy attached) to SEA's request for information. BNSF's response includes a detailed chronology of ownership transactions, details on extensive environmental and historical reviews of properties involved in the Martin Luther King, Jr. Parkway, and notes that none of the properties over which the new Science Center of Iowa is being built is on property presently owned by BNSF, over BNSF lines of railroad, or over the trackage sold to the City of Des Moines in 2000 to permit the Marlin Luther King Jr. Parkway construction. BNSF's response also discusses steps taken in this proceeding to comply with the section 106 process that the Board imposed.

BNSF's response indicates that a part of the right-of-way (0.71 mile from Milepost 67.50 to Milepost 0.40) was sold prior to receiving abandonment authority from the Board and without retaining an operating easement. BNSF stresses that it has consistently sought to comply fully with all Board environmental and historical regulations when BNSF had reason to believe Board authority was required and that the sale to the City of Des Moines without such authority was an aberration. BNSF does have in place internal controls on line dispositions, including abandonments.

### **Ownership of Line**

To address potential State Historic Preservation Office (SHPO) concerns, BNSF's response divides the 1.88 mile Des Moines Trackage into five segments which run from the east end of the line at Milepost 67.38 to the southwest end of the line at Milepost 1.45. These five segments are described as follows:

Part 1: Milepost 67.38 – Milepost 67.50 (0.12 miles). This segment extends from the east bank to the west bank of the Des Moines River and consists of an easement for a bridge to cross the river.

Part 2: Milepost 67.50 – Milepost 0.40 (0.71 miles). There is an equation in this segment where Line Segments 81 and 82 meet and this equation is at Milepost 68.20 = Milepost 0.39. This segment of the line extends from the west bank of the Des Moines River to the south line of the westerly extension of Tuttle Street. This part of the line was sold to the City of Des Moines on June 20, 2000, to make way for the Martin Luther King, Jr. Parkway. BNSF has no record that it retained an easement to continue operations over this portion of line and has no record of prior Board authorization.

Part 3: Milepost 0.40 – Milepost 0.79 (0.39 miles). BNSF retains ownership of track and real estate along this segment. This part of the line traverses from the westerly extension of Tuttle Street to the north bank of the Raccoon River.

Part 4: Milepost 0.79 – Milepost 0.90 (0.11 miles). This segment extends from the north bank to the south bank of the Raccoon River. Flooding in 1993 heavily damaged the bridge over the Raccoon River. This bridge was sold to the City of Des Moines on July 31, 2001. Following an historical review in concurrence with the SHPO, the city removed the bridge to prevent future flood damage in the area. BNSF retained an easement over the Raccoon River to meet potential service needs.

Part 5: Milepost 0.90 – Milepost 1.45 (0.55 miles). BNSF owns the track and real estate along this segment. This part of the line extends from the south bank of the Raccoon River to the end of the line in the ex-CNW Bell Avenue Yard.

## **Summary of Findings**

The Phase IA Reconnaissance Survey completed in September, 2004, by Cynthia Peterson (Peterson 2004) resulted in the findings summarized in this section. According to Peterson, in portions of the 1.88 mile corridor, the ties and rails have been removed by previous construction projects. In other areas, the rail line is not visible; it has been paved with streets or sidewalks or lies under grassy areas.

Peterson indicates that three situations exist along the corridor (see Peterson 2004, Figure 5). For a distance of 976 m along the corridor's 3,030 m length, (this area corresponds to Parts 1 and 4 and sections of Part 5 and the western extreme section of Part 2) the rail lines and ties have been previously removed. For a distance of 805 m of the corridor's length (this area corresponds to sections of Parts 3 and 5), visual inspection suggests the rail line has been buried beneath road and sidewalk pavement or grass. The remaining 1,249 m of the abandonment route (Part 2) still has ties and rails present, however this area is no longer owned by BNSF, and will not be impacted by the proposed abandonment.

A small portion of the corridor is located within the NRHP-listed Civic Center Historic District. This section of rail line within Part 2 is no longer owned by BNSF but was mitigated by the Federal Highway Administration as part of the Martin Luther King Jr. Parkway construction project following its purchase by the City of Des Moines. Peterson noted that there are no railroad ties or lines remaining within that portion of the corridor which corresponds to the District and did not recommend additional work in this area as long as there are no ground disturbing activities.

One previously recorded archeological site, NRHP-eligible Site 13PK61 (Ft. Des Moines No. 2 and associated prehistoric components), is located within the project corridor. That portion of the railroad that lies within Site 13PK61 has been paved over or is otherwise buried and not visible at the ground surface. This section of rail line within Part 2 is no longer owned by BNSF but was mitigated by the Federal Highway Administration as part of the Martin Luther King Jr. Parkway construction project following its purchase by the City of Des Moines.

## **Conclusion**

As detailed in BNSF's response dated January 24, 2005, none of the properties over which the new Science Center of Iowa was built is on property presently or previously owned by BNSF or over the trackage sold to the City of Des Moines in 2000 to permit the Martin Luther King Jr. Parkway construction, and therefore, historic issues related to the Science Center would not be subject to the Board's jurisdiction.

Part 2 of the right-of-way was sold to the City of Des Moines in 2000 prior to receiving abandonment authority from the Board and without retaining an operating easement. This sale to the City of Des Moines allowed the City to move forward with the Martin Luther King Jr. Parkway construction project. BNSF has no explanation for the aberrant sale to the City of Des

Moines. However, the disposition of the property involved the Federal-aid highway Martin Luther King, Jr. Parkway construction project that was in the planning stages for a long period of time prior to the actual construction of the parkway. As a result, the transactions to acquire the land did not arise out of the usual line disposition channels within BNSF, but happened over a period of years in connection with the Martin Luther King, Jr. Parkway construction project.

Although the property for use of the parkway (Part 2) was sold without the requisite Board NHPA and NEPA reviews, there have, however, been extensive environmental and historical reviews (including data recovery) conducted in this area by or on behalf of the Federal Highway Administration beginning in 1982 through 2003 as a result of *their* compliance with NHPA and NEPA for the Federal-aid funded Martin Luther King, Jr. Parkway construction project. Phases I, II and III and geomorphological studies were conducted within Part 2 including those sections that contained the multi-component National Register eligible Site 13PK61 (Fort Des Moines No. 2), and the National Register listed Civic Center Historic District (see Peterson 2004 for a complete summary of studies conducted). As recently as 2001 and 2002, The Louis Berger Group conducted data recovery within Site 13PK61 in the areas between SW 7th and SW 2nd Streets. The results of these efforts were summarized in the two volume report, Archaeological Data Recovery for the SW 2nd to SW 7th Streets Segment of the Martin Luther King, Jr. Parkway (The Louis Berger Group, Inc. 2003).

As a result of the data recovery efforts that have already been conducted in Part 2 of the project area, SEA has determined that adequate measures have been taken in this section of the project area to mitigate any adverse effects to historic properties. As some of the studies conducted within Part 2 occurred prior to the 2001 amendments to the section 106 regulations requiring consultation with Federally recognized tribes, only limited tribal consultations were likely conducted as part of earlier investigations. However, based on recent discussions between SEA staff and Mike LaPietra of the Iowa Division of Federal Highway Administration and Randall B. Faber of the Iowa DOT, tribal consultations regarding The Louis Berger Group, Inc. studies conducted in 2001 and 2002 did occur with the following tribes: the Iowa Tribe of Oklahoma, the Sac and Fox of the Mississippi in Iowa, the Iowa Tribe of Kansas and Nebraska, the Sac and Fox Nation of Oklahoma, and the Sac and Fox Nation of Missouri in Kansas and Nebraska. We are distributing copies of this letter to these previously consulted tribes in addition to the Otoe-Missouria Tribe of Indians, Oklahoma and the Ho-Chunk Nation of Wisconsin which SEA has also identified as having a potential interest in historic properties identified within the project area.

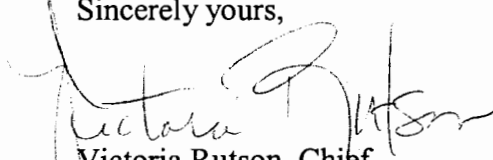
Parts 1, 3, 4, and 5 remain within the Board's jurisdiction and are subject to the condition imposed in the Board's August 16, 2004 decision requiring completion of the section 106 process. However, based on the recommendations of the Phase IA Reconnaissance survey conducted on behalf of the Board, no further archaeological work is recommended within Parts 1, 3, 4 and 5 as long as the grade remains in place (see Peterson 2004:11).

To reiterate, based on the information summarized in this letter, SEA has determined that the proposed rail abandonment would not adversely affect historic properties listed in or eligible

for inclusion in the National Register located within the area of potential effect for this undertaking. Therefore, the Board finds that there are **No Historic Properties Adversely Affected** for this undertaking in accordance with 36 CFR 800.5(b). Please inform SEA within the 30 day specified time frame if you object with this finding.

If we can be of further assistance, please contact me or Kenneth Blodgett of my staff at (202) 565-1554.

Sincerely yours,



Victoria Rutson, Chief  
Section of Environmental Analysis

Enclosures:

1. Phase IA Reconnaissance of a Proposed Burlington Northern and Santa Fe Railway Company 1.88 Mile Abandonment, City of Des Moines, Polk County, Iowa [a.k.a., STB Docket AB-6 (Sub-No. 401X) (Peterson 2004)]

2. BNSF's response dated January 24, 2005

CC: Sidney Strickland, BNSF  
Karen Theimer-Brown, ACHP  
Iowa Tribe of Oklahoma  
Sac and Fox of the Mississippi in Iowa  
Iowa Tribe of Kansas and Nebraska  
Sac and Fox Nation of Oklahoma  
Sac and Fox Nation of Missouri in Kansas and Nebraska  
Otoe-Missouria Tribe of Indians, Oklahoma  
Ho-Chunk Nation of Wisconsin